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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/537,772	06/06/2005	Armin Grobenstiegl	32016-218521 RK	4861
26694	7590	03/16/2009	EXAMINER	
VENABLE LLP			SMITH, MATTHEW J	
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WASHINGTON, DC 20043-9998				
			ART UNIT	PAPER NUMBER
			3635	
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			03/16/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/537,772	GROBENSTIEG ET AL.	
	Examiner	Art Unit	
	Matthew J. Smith	3635	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 December 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-14 is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4-10, and 15 is/are rejected.
- 7) ☒ Claim(s) 3 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>11Dec08</u> | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 9 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The terminology "direct or indirectly" is considered indefinite.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 2, 4, 5, 7, 8, 10, and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Knell (4428173) in view of Tiffin et al. (4016688).

Knell discloses a welded box profile for fitting a digger with a backhoe bucket comprising: an upper flange 22, a lower flange 24, sidewalls 26, 28 connected to the upper flange and lower flange; corner regions, at the intersection of the flanges and sidewalls; and the sidewalls regions include positioning locations 150 for cylinder attachment points but not the details of the box.

Tiffin et al. present, in Fig. 2, upper corner regions and lower corner regions 28-31 having reinforced profiles between the upper flange and the sidewalls and between

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the lower flange and the sidewalls; the corner regions formed with separate sheets welded to the respective sidewalls; the sidewalls having a thinner cross section than the corners; the lower flange positioned between the corner regions to be essentially flush with the respective end corner regions; the corner regions include a reducing cross-sectional area; the reducing cross-sectional areas faces the respective sidewall; the reducing cross-sectional area ends flush with an outside contour of the respective sidewall; the reducing cross-sectional area converges towards an inside and outside contour of the respective sidewall; a connection element welded on the profile exposed end region and having a hollow-box design; the connection element cross-section adapted to the exposed end region cross-section of the respective box end cross section; and the corner regions connected by welding to the respective upper flange and lower flange.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to assemble the Knell boom incorporating the end regions of Tiffin et al. in order to increase stiffness.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Knell in view of Tiffin et al. as applied to claim 1 above, and further in view of Vaerk et al. (4337601).

The combination discloses the apparatus substantially as claimed but not the cross-section reducing area ends flush with the inside contour of the associated sidewall

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Vaerk et al. show the respective cross-section reducing area ends 56 substantially flush with the inside contour of the associated sidewall 52.

It would have been obvious to a person having ordinary skill in the art at the time the invention was made to have the inside contour in a box-shape, as substantially shown by Vaerk et al., since it is well known and no new, unexpected, or unpredictable result would occur.

Allowable Subject Matter

Claims 11-14 are allowed.

Claim 3 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claim 9 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed 11 December 2008 have been fully considered but they are not persuasive. The examiner contends the reason or motivation to combine references does not have to be the same as applicants. To incorporate the Tiffin et al.

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structure into the Knell design to control buckling is still an acceptable combination and does not preclude protecting the integrity of the welding seams.

Claim 1 states the sidewall attaches to the cylinder, which the prior art discloses, as opposed to the corner regions (as in objected to claim 3).

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Smith whose telephone number is (571) 272-7034. The examiner can normally be reached on T-Th, 8-3.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Richard E. Chilcot can be reached on 571-272-6777. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Richard E. Chilcot, Jr./
Supervisory Patent Examiner, Art Unit 3635

/M. J. S./
Examiner, Art Unit 3635
24 February 2009